

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RAYMOND ALLEN

Claimant

VS.

COLLINS INDUSTRIES, INC.

Respondent

Self-Insured

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Docket No. 233,190

ORDER

Claimant requested review of the preliminary hearing Order dated June 22, 1998, entered by Administrative Law Judge Bruce E. Moore.

ISSUES

The Judge denied claimant's request for benefits after finding that claimant failed to prove (1) that he sustained personal injury by accident arising out of and in the course of employment with respondent and (2) that he provided respondent with timely notice of accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Appeals Board finds:

The preliminary hearing Order should be affirmed.

The claimant, Raymond Allen, alleges he initially injured his back on Friday, January 30, 1998, while moving a box of parts onto a pallet. Mr. Allen also alleges he sustained additional back injury each and every work day through his last day of work for Collins Industries, Inc. on April 30, 1998.

Mr. Allen testified how the alleged January 1998 accident occurred and how his symptoms increased after that date. But he did not present medical evidence that established it was more probably true than not that he sustained accidental injury while he continued to work after the initial incident. Mr. Allen also testified that he notified his immediate supervisor, Richard Darling, the following Monday that he had injured his back at work. Mr. Darling testified and denied that Mr. Allen notified him of any work injury until several months after the alleged January 1998 incident.

Mr. Allen's claim hinges upon his credibility. The Judge determined Mr. Allen's testimony was not credible and denied the request for benefits. Because the Judge was in the position to personally observe Mr. Allen testify and assess his demeanor, in this instance the Appeals Board gives some deference to the Judge's impression of Mr. Allen's credibility.

The Appeals Board adopts the Judge's conclusion that Mr. Allen has failed to prove (1) that he provided Collins with timely notice of a January 30, 1998, work-related accident, and (2) that he sustained additional injury after January 1998 through April 30, 1998, while he continued to work.

As provided by K.S.A. 1997 Supp. 44-534a, the above findings are not binding but subject to modification upon a full hearing on the claim.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated June 22, 1998, entered by Administrative Law Judge Bruce E. Moore should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1998.

BOARD MEMBER

c: Darla J. Lilley, Wichita, KS
John F. Hayes, Hutchinson, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director